



DATE: December 11, 2025

TO: Sonya Penn, Acting Director of Labor Relations Office of Human Resources, USPTO By electronic email: lgrievance@uspto.gov

FROM: Patricia Duffy, President, Patent Office Professional Association

RE: Grievance over failure to engage in predecisional involvement in the development of PTAB Patent Attorneys' Performance Appraisal Plan POPA Docket # 12-11-2025-POPA-12

This is an Association grievance filed pursuant to Article 13, Section 6 of the parties' 2024 collective bargaining agreement over management's failure to provide POPA predecisional involvement in the development of the new performance appraisal plan for the Patent Attorneys who work for the Patents Trial and Appeal Board.

Our Collective Bargaining Agreement (CBA) provides for predecisional involvement (PDI) on "matters that are traditionally considered an exercise of management rights that are subject only to impact and implementation negotiation," such as performance standards. (see Article 16, Section 8, subsection A). The contract's mandate is clear:

Whenever management contemplates changing conditions of employment through the exercise of management rights that would result in the need to bargain, it will first engage the Association in predecisional discussions before making a final determination of whether and how to make the contemplated change.

It is only then that bargaining commences. However, on November 13, management provided POPA with notice of its intent to amend the PTAB Patent Attorney's PAP and offered POPA an opportunity to engage in post-implementation bargaining over the impact and implementation of these changes. The Agency has provided no reason why POPA has been denied the opportunity for predecisional input in this matter, which is a "patent" violation of our CBA. This violation deprived the union of an opportunity to provide input to the USPTO on the substance of the changes "before making a final determination of whether and how to make the contemplated change[s]," which is

particularly egregious inasmuch as the substance of the changes to the performance standards and expectations changes may well be beyond the scope of bargaining.

By failing to provide predecisional involvement in this matter, management has also committed an unfair labor practice in violation of 5 U.S.C. § 7116(a)(1) and (7) because it is enforcing a government-wide rule or regulation that is in conflict with the CBA, even though the CBA was in effect before the date the rule or regulation was prescribed. Specifically, the USPTO is enforcing Executive Order 14,236, *Additional Recissions of Harmful Executive Orders and Actions*, (March 14, 2025), section 2(q), and OPM Guidance on Revocation of Executive Order 14119 (March 27, 2025), which directed that “Agencies should also cease the use of pre-decisional involvement of labor unions and employees in agency matters.”

The November 13 notice also stated that “management will need to . . . negotiate the issues associated with the implementation of the POPA changes **post-impact**.” (emphasis in original). However, the notice also states that “the new standards will not go into effect until the parties reach agreement.” To the extent that the USPTO is or has implemented the changes before completion of impact bargaining, it has also violated Article 16, section 9 and has committed an unfair labor practice in violation of the duty to bargain in good faith, 5 U.S.C. § 7116(a)(1) and (5), because there is no overriding exigency requiring immediate implementation.

Accordingly, without waiving our right to bargain over the impact and implementation of the changes to the PTAB PAP (and any negotiable substantive or procedural proposals) we demand that the agency withdraw the new performance appraisal plans and offer POPA an opportunity for predecisional discussions in accordance with Article 16, section 8 before making any final determination to alter the PTAB PAP. Any impact bargaining in which POPA engages in the interim shall not be viewed as a waiver of our right to seek restoration of the *status quo ante* as relief for this grievance.

Sincerely,

A handwritten signature in black ink that reads "Patricia Duffy". The script is cursive and fluid, with the first letters of the first and last names being capitalized and prominent.

Patricia Duffy
President, POPA